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Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States
October Term, 1993

Heartland Federal Savings and Loan Association,

Petitioner,

vs.

Briscoe Enterprises, Ltd., II,

Respondent.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

The questions presented involve confirmation by a bankruptcy court of a "cramdown" plan of reorganization pursuant to 11 U.S.C.A. § 1129(b). The court of appeals affirmed the bankruptcy court's confirmation of the plan in this case.

1. In order to establish the elements necessary to obtain confirmation of a cramdown plan of reorganization under 11 U.S.C.A. § 1129(b), is the proponent of the plan bound by a *clear and convincing evidence* standard of proof or by a *preponderance of the evidence* standard?

2. May the court of appeals, in determining whether a cramdown plan of reorganization is "fair and equitable" under 11 U.S.C.A. § 1129(b), place on a creditor opposing the plan the burden of showing that the proposed plan is *not* fair and equitable?

3. Does 11 U.S.C.A. § 1122 permit a court to confirm a plan of reorganization which places unsecured claims in separate classes while nevertheless giving them identical treatment?

LIST OF PARTIES

The following is a list of all of the parties to the proceeding in the United States Court of Appeals for the Fifth Circuit, whose judgment is sought to be reviewed:

Appellant:
Briscoe Enterprises, Ltd., II

Appellee:
Heartland Federal Savings and Loan Association

Heartland Federal Savings and Loan Association has the following parent companies or subsidiaries within the meaning of Supreme Court Rule 29.1:

None.

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TO THE UNITED STATES SUPREME COURT:

Heartland Federal Savings and Loan Association asks this court to issue a writ of certiorari to review the opinion issued July 13, 1993, by the United States Court of Appeals for the Fifth Circuit.

OPINIONS AND JUDGMENTS BELOW

Petitioner has reproduced in a separate appendix the opinions and judgments which the courts below have issued. The opinions and judgments are as follows:

Briscoe Enterprises, Ltd., II v. Heartland Federal Savings and Loan Association (In re Briscoe Partnership II, Ltd.), 994 F.2d 1160 (5th Cir. 1993) (appeal from the district court).

Heartland Federal Savings and Loan Association v. Briscoe Enterprises, Ltd., II, 138 Bankr. 795 (N.D. Tex. 1992) (on appeal from the bankruptcy court).

In re Briscoe Enterprises, Ltd., II, No. 489-44447-MT-11 (Bankr. N.D. Tex. Apr. 23, 1991) (original decision).

JURISDICTION

Briscoe filed a petition for relief under chapter 11 of the United States Bankruptcy Code, and the bankruptcy court had jurisdiction to entertain that petition pursuant to 28 U.S.C.A. § 157 (West 1993).

The court of appeals issued its opinion on July 13, 1993. The court of appeals denied Heartland's petition for rehearing on August 16, 1993. This court has jurisdiction, pursuant to 28 U.S.C.A. § 1254(1) (West 1993), to review the decision of the court of appeals.

STATUTES INVOLVED

11 U.S.C.A. § 1122 (West 1993):

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C.A. § 1129(a)(8), (10) (West 1993):

(a) The court shall confirm a plan only if all of the following requirements are met:

. . .

(8) With respect to each class of claims or interests —

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

. . . .

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

11 U.S.C.A. § 1129(b)(1), (2)(A) (West 1993):

(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

STATEMENT OF THE CASE

Briscoe Enterprises, Ltd., II, is a limited partnership formed to develop the Regalridge apartment complex in Fort Worth, Texas. Briscoe built Regalridge with financing from Heartland Federal Savings and Loan Association and the City of Fort Worth. Heartland loaned $18.7 million; the City loaned $7 million. The City's lien on Briscoe's property was junior to that of Heartland. In 1988 Briscoe began missing payments on the loans, and it subsequently filed for chapter 11 bankruptcy protection.

In the bankruptcy court Briscoe ultimately proposed a fourth amended plan of reorganization which divided the creditors' claims and interests into six classes:

Class 1 - allowed administrative claims.
Class 2 - allowed priority claims.
Class 3 - allowed unsecured claim of City of Fort Worth.
Class 4 - allowed secured claim of Heartland.
Class 5 - allowed unsecured claims.
Class 6 - holders of interests in Briscoe.

The bankruptcy court assigned the apartment property, Briscoe's principal asset, a value of $8.2 million, and that became the amount of Heartland's allowed secured claim in Class 4. Heartland's remaining $10 million claim was classified in Class 5 with the claims of other unsecured creditors. Class 4 was thus an impaired class, consisting solely of Heartland's secured claim. The City's unsecured $7 million claim was the sole claim classified in Class 3. However, the plan classified all other allowed unsecured claims in Class 5, and those claims were treated the same as the City's $7 million Class 3 unsecured claim.

1. The "preponderance of the evidence" standard.

Because Heartland's impaired Class 4 claim voted against the plan, the bankruptcy court could not confirm the plan unless Briscoe established that the plan met the "cramdown" requirements of 11 U.S.C.A. § 1129(b). Among other things, this meant that Briscoe had to show that the plan was "fair and equitable" as to each impaired class that had not accepted the plan. Thus, in this case Briscoe had to show that the plan was "fair and equitable" as to Heartland.

The bankruptcy court held a hearing on whether to confirm the plan, and it subsequently issued findings of fact and an order confirming the plan. Heartland filed an appeal from that order, and the district court reversed. The court ruled that a "clear and convincing evidence" standard was the correct standard of proof. The court concluded, however, that whether it applied a "clear and convincing" standard or a "preponderance of the evidence" standard, Briscoe had not satisfied its burden of showing that the plan was "fair and equitable" to Heartland under section 1129(b).

The court of appeals disagreed. Relying on *Grogan v. Garner*, 498 U.S. 279 (1991) and *Addington v. Texas*, 441 U.S. 418 (1979), it concluded that the "preponderance of the evidence" standard was the appropriate standard of proof for a cramdown plan of reorganization. 994 F.2d 1165. The court determined that Briscoe had proved all the elements of its case under that standard. It noted, however, that "this is a case in which the plan would not pass a clear and convincing standard." 994 F.2d at 1164.

2. The "fair and equitable" requirement.

The plan sets up a trust to manage the apartment property, and provides for payment of Heartland's $8.2 million secured claim through funds generated from the operation of the apartment over the next fifteen years. The plan contemplates payments in monthly installments of principal and interest, as though amortized over a 30 year period, at 10.25% interest. However, at the end of the fifteen year period only 20% of the principal would be paid. The remaining principal is to be paid in full in a single balloon payment made upon sale of the property or on the expiration of the fifteen year period, whichever occurs first.

In its findings of fact the bankruptcy court stated that the plan "has a marginal prospect of success," yet the court concluded that because the plan included the above terms for repayment of Heartland, the plan satisfied the "fair and equitable" requirements of 11 U.S.C.A. § 1129(b).

The district court disagreed. It determined that Briscoe had "failed to show, what the value of Regalridge will be in fifteen years, that there is any prospect for the sale or refinancing of Regalridge, or who the purchaser or refinancer might be." The district court also concluded that Briscoe had failed to sustain its burden even under a "preponderance of the evidence" standard.

The court of appeals did not cite to evidence from the record supporting this part of Briscoe's case. In fact, the court nowhere answered the district court's objections by expressly setting forth the specific evidence that Briscoe had offered to satisfy its burden of proof on this issue. Instead, the court asserted that "when the balloon is due,

either the property will be sold which will provide the balloon or refinancing will be possible." 994 F.2d at 1169. In the absence of evidence in the bankruptcy court record to support this assertion, the court argued that "[t]here is no evidence that the property will decline in value." *Id.* The court did recognize that "[e]stimating property values fifteen years hence is inherently speculative," but it said that "[i]t is reasonable to assume that the property itself will provide the source for the balloon payment." *Id.* Based on this assumption, the court of appeals found that this plan satisfied the "fair and equitable" requirement of section 1129(b).

3. Gerrymandering the City's unsecured claim.

The bankruptcy court found that a reasonable basis existed for separate classification of the City's unsecured Class 3 claim from the claims of other unsecured creditors in Class 5. The district court concluded that no evidence supported that finding. The court of appeals, while noting that the City's Class 3 unsecured claim was treated just like that of unsecured creditors in Class 5, concluded that good business reasons supported separate classification of the City's claim from the other unsecured creditor claims. 994 F.2d 1167. The court thereby affirmed the separate classification of the City's unsecured claim from the claims of the other unsecured creditors.

Pursuant to 11 U.S.C. § 1129(a)(10), if a class of claims is impaired under the plan, then at least one class of claims that is impaired must vote to accept the plan. Heartland voted its claim against the plan; the City voted for it. By placing the City's unsecured claim in a class by itself, Briscoe made certain that at least one impaired class would vote to accept the plan.

ARGUMENT

I. The decision to disregard the "clear and convincing evidence" standard will lead to confusion among the lower courts as to the applicable standard of proof in similar bankruptcy cases.

In deciding that *Grogan v. Garner* mandated the use of the "preponderance of the evidence" standard in order to confirm a "cramdown" plan of reorganization, the court of appeals put into question a substantial amount of case law from bankruptcy courts in other circuits. Until this decision, bankruptcy courts had overwhelmingly confirmed the application of the traditional "clear and convincing evidence" standard of proof in a "cramdown" confirmation hearing. *See In re Birdneck Apartment Assoc., II, L.P.*, 156 Bankr. 499, 507 (Bankr. E.D. Va. 1993); *In re S.A.B.T.C. Townhouse Ass'n, Inc.*, 152 Bankr. 1005, 1007-08 (Bankr. M.D. Fla. 1993); *Imperial Bank v. Tri-Growth Centre City, Ltd. (In re Tri-Growth Centre City, Ltd.)*, 136 Bankr. 848, 852 (Bankr. S.D. Cal. 1992); *In re Tallahassee Assoc., L.P.*, 132 Bankr. 712, 718 (Bankr. W.D. Pa. 1991); *In re Future Energy Corp.*, 83 Bankr. 470, 481 (Bankr. S.D. Ohio 1988); *In re Agawam Creative Marketing Assoc., Inc.*, 63 Bankr. 612, 618-19 (Bankr. D. Mass. 1986); *In re Stoffel*, 41 Bankr. 390, 392 (Bankr. D. Minn. 1984).

Yet the court of appeals' decision merits review by this court not only because of the potential for confusion regarding the appropriate standard of proof, but because the court's decision places in question the application of the "clear and convincing evidence" standard of proof in other bankruptcy contexts.

For example, the "clear and convincing evidence" standard presently applies when a trustee seeks turnover of estate property under section 542(a) of the Code, *Evans v. Robbins*, 897 F.2d 966, 969 (8th Cir. 1990); *Gorenz v. Illinois Dep't of Agriculture*, 653 F.2d 1179, 1184 (7th Cir. 1981); when a creditor contests the debtor's amendment of schedules, *In re Yonikus*, 996 F.2d 866, 872 (7th Cir. 1993); when a debtor seeks to rebut proof of a bad faith filing of the petition, *In re McCormick Road Assoc.*, 127 Bankr. 410, 416 (N.D. Ill. 1991); when a creditor seeks the appointment of a trustee under section 1104(a), *In re Mako, Inc.*, 102 Bankr. 809, 812 (Bankr. E.D. Okla. 1988); when a junior lienholder raises the defense of marshaling of assets, *In re Vermont Toy Works, Inc.*, 135 Bankr. 762, 766 (D. Vt. 1991); and when a creditor seeks to overcome the presumption of proper mailing of notice of bar dates, *In re Bucknum*, 951 F.2d 204, 207 (9th Cir. 1991).

The risk of confusion as to the proper standard of proof in these other bankruptcy contexts arises because of the broad reading which the court of appeals gave to this Court's decision in *Grogan v. Garner*.

Though the district court read *Grogan v. Garner* as applicable only to proceedings to determine whether debts were dischargeable, the court of appeals said this reading was too narrow. It focused on this Court's conclusion in *Grogan v. Garner* that Congressional silence with regard to the standard of proof in dischargeability proceedings was inconsistent with the view that Congress had intended to mandate a higher standard of proof in such cases. While that one factor, standing alone, might weigh against requiring "clear and convincing evidence" in the present case, this Court emphasized other factors as well, including that a higher standard of proof would increase the burden

of creditors whose state's laws imposed the preponderance of the evidence standard; that section 523 groups together the exceptions to discharge (suggesting that Congress did not intend for different standards to apply to the different exceptions); and that section 523 required a balancing of the "fresh start" policy with the interests of creditors seeking to recover a variety of debts, including alimony, taxes, and damages for fraud. 498 U.S. at 283-88.

Disregarding these other important factors which are unique to dischargeability proceedings, the court of appeals read *Grogan v. Garner* quite broadly, relying for the most part on this Court's general discussion of the standard of proof question in *Addington v. Texas*, 441 U.S. 418 (1979).

In *Addington* this court noted that the "clear and convincing evidence" standard had been reserved for cases involving quasi-criminal wrongdoing such as fraud, where something more than the mere loss of money is at risk, or for cases that implicate important individual interests, such as deportation or denaturalization proceedings. 994 F.2d at 1164-65. Finding no important liberty interests at stake with regard to Heartland's position as a secured creditor, and noting Congressional silence regarding the standard of proof under section 1129(b), the court of appeals declined to follow the virtually unanimous approach to this issue which the bankruptcy courts had taken.

If the silence of Congress and the absence of these important liberty interests constitute the cornerstone for application of a "clear and convincing evidence" standard, then the bankruptcy courts have little basis for applying that standard in any of the many contexts in which they have traditionally applied that standard.

Even outside the bankruptcy context, courts have not applied the "clear and convincing evidence" standard so narrowly, applying it in a number of instances in which liberty interests are not at risk, but important property rights are. *See Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1295 (6th Cir. 1991) (reformation of contract); *Columbus-America Discovery Group v. Atlantic Mut. Ins. Co.*, 974 F.2d 450, 464 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1625 (1993) (abandonment of estate property); *Amoco Prod. Co. v. United States*, 852 F.2d 1574, 1580 (10th Cir. 1988) (quieting title to property).

Faced with an interstate water rights dispute in *Colorado v. New Mexico*, 467 U.S. 310 (1984), this Court reasoned that the clear and convincing evidence standard "accommodates society's competing interest in increasing the stability of property rights and in putting resources to their most efficient uses." *Id.* at 317. With regard to patent rights, the Federal Circuit has decided that the presumption of patent validity is so strong that only clear and convincing evidence will overcome that presumption. *See Price v. Symsek*, 988 F.2d 1187, 1191-92 (Fed. Cir. 1993). Thus, certain property rights are important enough that the courts, by application of the clear and convincing standard, regularly shift the risk of an erroneous decision to the one wishing to take away those rights.

The bankruptcy courts had good reason to require "clear and convincing evidence" of each of the elements necessary to confirm a "cramdown" plan of reorganization. Section 1129(a) allows impaired classes to object to the plan and thereby prevent confirmation, except where the proponent proves that the plan is "fair and equitable." The three alternative requirements for satisfying the "fair and equitable" test are only minimum requirements. *See*

11 U.S.C.A. § 1129(b)(2)(A) (West 1993). In establishing only minimum requirements, the Code left the bankruptcy courts with the duty to apply traditional equitable rules and principles in deciding whether to permit the plan to override the creditors' objections to what is frequently a drastic alteration of the creditors' state law rights. The court of appeals in this case long ago affirmed that a party had to satisfy the "clear and convincing" standard in order to obtain approval of a "cram down" reorganization. *See Atlantic Coast Line Ry. v. St. Joe Paper Co.*, 179 F.2d 538, 544 (5th Cir.) (requiring "clear and convincing proof that the provisions of the plan are fair and equitable" under former Bankruptcy Act), *cert. denied*, 339 U.S. 929 (1950).

The requirement of "clear and convincing" evidence arose in the courts of equity. *See* Note, *Appellate Review in the Federal Courts of Findings Requiring More than a Preponderance of the Evidence*, 60 Harv. L. Rev. 111, 112 (1946). Courts still apply this standard where a party seeks equitable relief. *See, e.g., Rentenbach Eng'g Co. v. General Realty, Ltd.*, 707 S.W.2d 524, 527 (Tenn. Ct. App. 1985); *Crompton v. Bruce*, 669 P.2d 930, 934 (Wyo. 1983); *Grabowski v. Grabowski*, 120 N.H. 745, 422 A.2d 1040, 1042 (1980). The bankruptcy courts properly relied on the established traditions of equity jurisprudence in giving effect to Congress's decision to allow a "cramdown" only where a plan's proponent showed by clear and convincing evidence that the plan was fair and equitable to objecting, impaired creditors.

The court of appeals has thus removed from the bankruptcy courts the power the Code gave them to apply the "fair and equitable" standard so as to prevent secured lenders — who have underwritten the debtor's activities — from having their interests swept lightly under the rug.

II. The court of appeals may not shift the burden to an opponent of a cramdown plan of reorganization to show that the plan is not "fair and equitable."

Briscoe, as the proponent of this cramdown plan of reorganization, had the burden of establishing all elements necessary to permit confirmation of the plan under section 1129. *See, e.g., In re Richard Buick, Inc.*, 126 Bankr. 840, 851 (Bankr. E.D. Pa. 1991); *In re Apple Tree Partners, L.P.*, 131 Bankr. 380, 393 (Bankr. W.D. Tenn. 1991); *In re Rusty Jones*, 110 Bankr. 362, 373 (Bankr. N.D. Ill. 1990). The court of appeals decided that the balloon payment which the plan provided satisfied the requirement under section 1129(b)(2) that the plan be "fair and equitable." 994 F.2d at 1168-69. In doing so, the court expressly relied on an assumption rather than on facts Briscoe had proved in the bankruptcy court. In addition, the court focused on facts which it said Heartland had failed to show, rather than on any facts Briscoe proved. The court thereby improperly placed on Heartland the burden of having to *disprove* the "fair and equitable" requirement.

Briscoe chose to establish the fair and equitable requirement under section 1129(b)(2)(A)(i), which is one of the three alternative minimum requirements for proving that the plan is "fair and equitable" under section 1129(b). Subsection (b)(2)(A)(i) requires that the secured creditor retain its lien on the property and receive "deferred cash payments totalling at least the allowed amount of such claim." In this case, Heartland would receive payments for a fifteen year period, at the end of which only 20 percent of the loan would be paid. At the end of this fifteen year period, Heartland would be paid the remaining 80 percent of its loan in one balloon payment.

The court explained why it felt this scheme was fair and equitable: "It is reasonable to assume that the property itself will provide the source for the balloon payment. There is no evidence that the property will decline in value . . . [T]he evidence did not suggest that the property would decline in value so that the debtor would be unable to pay Heartland its remaining principal." 994 F.2d at 1169.

Because Briscoe had the burden of proof on this issue, the question is not whether evidence showed that the property would decline in value in fifteen years. The issue is whether Briscoe showed that in fifteen years the property would have retained sufficient value to satisfy the balloon payment. Briscoe did not introduce such evidence. In fact, Briscoe presented no evidence as to the value of the property in fifteen years. Thus, there was simply no evidence from which to conclude one way or the other that the value of the property would rise or decline.

The court of appeals aptly noted in this case that "[e]stimating property values fifteen years hence is inherently speculative . . ." 994 F.2d at 1169. For this reason the majority of courts addressing this issue have held that balloon payments are rarely acceptable. *See In re Cranberry Hill Assoc., Ltd. Partnership*, 150 Bankr. 289, 291 (Bankr. D. Mass. 1993) (holding a balloon payment in nine years to be "far from certain"); *In re French Quarters East, L.P.*, 148 Bankr. 910, 911 (Bankr. W.D. Mo. 1992) (rejecting balloon payment in ten years); *In re M & S Assoc., Ltd.*, 138 Bankr. 845, 851-52 (Bankr. W.D. Tex. 1992) (confirmation of the plan, which included provisions for balloon payment, would allow the debtor to postpone the inevitable and gamble with secured creditor's money); *In re Pelham Street Assoc.*, 134 Bankr. 700, 701 (Bankr.

D.R.I. 1991) (stating that plan with five year balloon payment was "pie in the sky, and no secured creditor should be required to depend on such illusory pie"); *In re Lakeside Global II, Ltd*, 116 Bankr. 499, 514 (Bankr. S.D. Tex. 1989) (refusing to confirm a plan where satisfaction of balloon payment in three years was speculative).

This court should therefore make clear that under section 1129(b) a court of appeals cannot confirm a plan of reorganization based on assumptions or based on the failure of an opponent of the plan to show, in the absence of evidence proving the "fair and equitable" requirement, that the plan is not fair and equitable.

III. Congress did not intend that courts be able to gerrymander an impaired class so as to obtain an affirmative vote for a plan.

Section 1129(a)(10) of the Code provides that if a class of claims is impaired under the plan, the court may not confirm the plan unless at least one class of impaired claims votes to accept the plan. In this case, the plan gerrymandered an impaired class, in a manner contrary to section 1122, in order to create an impaired class which would accept the plan.

Specifically, the unsecured claim of the City was placed in class 3, while the unsecured claim of Heartland and the trade unsecured creditors were put in class 5. If the City's claim had remained with the other unsecured creditors' claims in class 5, then no impaired class would have accepted the plan. Class 5 voted against the plan, and the City's claim would not have changed that result.

However, the City's claim was in its own class, and it voted to accept the plan. That acceptance allowed the plan to satisfy section 1129(a)(10).

The court of appeals noted that "all the unsecured creditors will receive the same treatment." 994 F.2d at 1166. In a recent decision, the court took the opposite approach. In *In re Greystone III Joint Venture (Phoenix Mutual Life Ins. Co. v. Greystone III Joint Venture)*, 948 F.2d 134 (5th Cir. 1992), the court reversed a bankruptcy court order which confirmed a plan of reorganization. It held that under 11 U.S.C.A. § 1122 a plan may not classify similar claims differently simply in order to gerrymander an affirmative vote on a reorganization plan. *Id.* at 139. The court noted that separate classification of similar claims might be justified based on "good business reasons" but that such business reasons would only be valid if the different classes received different treatment under the plan. *Id.* at 141.

Other courts followed *Greystone*. *See, e.g., In re Bryson Properties, XVIII*, 961 F.2d 496, 502 (4th Cir.), *cert. denied*, 113 S. Ct. 191 (1992). However, in this case the court of appeals strayed from *Greystone* and indicated that classification of similar claims which are given identical treatment under the plan is not per se improper. By this petition, Heartland asks this court to hold that when the bankruptcy court classifies similar claims separately, the plan must also treat those claims differently. If the plan divides claims into separate classes but provides the same treatment, and if one of these classes is the only impaired class to vote for the plan, then the plan has improperly gerrymandered an impaired class solely in order to obtain an affirmative vote to satisfy section 1129(a)(10).

CONCLUSION

For these reasons, this court should grant this petition for writ of certiorari.

Respectfully submitted,

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